

ក្រុមការពារក្តី មាស មុត
MEAS MUTH DEFENCE TEAM
EQUIPE DE DEFENSE DE MEAS MUTH

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12 August 2014



To: Judge **YOU Bunleng**
 Judge **Mark HARMON**
 Co-Investigating Judges

Cc: **CHEA Leang**
Nicholas Koumjian
 Co-Prosecutors

Re: Request for clarification and notice concerning Co-Investigating Judge Harmon's
 31 July 2014 order to the International Co-Prosecutor

Dear Co-Investigating Judges,

We respectfully request clarification and provide a notification concerning Co-Investigating Judge Harmon's 31 July 2014 Order to the International Co-Prosecutor.¹

On 31 July 2014, Co-Investigating Judge Harmon issued an Order to the International Co-Prosecutor to file a redacted version of "International Co-Prosecutor's Response to Notification Concerning the Suspect's Requests to Access the Case File, Participate in the Judicial Investigation and Receive the Full Introductory Submission." The Order states that the International Co-Prosecutor must "submit, within five working days from the notification of this Order, a redacted version of the Response, eliminating all references that could lead to the identification of witnesses in Case 003."²

Generally, deadlines begin to run from the notification of the Order in both Khmer and English. However, this Order states that it was filed in English with a Khmer translation to follow "to expedite the submission of a redacted version of the Response."³ Although the Order is just over two pages long, the Khmer translation has never been notified (at least to the Defence).

Accordingly, we request clarification as to whether the International Co-Prosecutor's deadline to comply with the Order elapsed as of 7 August 2014 (five working days from notification of the Order in English), or whether the International Co-Prosecutor may wait

¹ Order on the International Co Prosecutor's Response to Notification Concerning the Suspect's Requests to Access the Case File, Participate in the Judicial Investigation and Receive the Full Introductory Submission, 31 July 2014, D82/3/3.

² *Id.*, p. 2.

³ *Id.*, p. 3.

until he receives the Khmer version before he begins redacting his “Response.” We note that the International Co-Prosecutor, who filed the “Response” on his own, has no need to receive the Order in Khmer and that redaction of a 15-page submission generally takes minimal time.

We also provide notice of our potential need to respond to the International Co-Prosecutor’s submission.

The Order states that “Meas Muth has no right, under the Internal Rules, to reply to the Response and that therefore no prejudice will be suffered by Meas Muth from the redaction, at this stage, of the evidence referenced therein.”⁴ While it may be within the Co-Investigating Judges discretion to allow “replies,”⁵ the International Co-Prosecutor’s submission is not a “Response” (whatever he may have titled it), and so the Defence’s responding submission will not be a “reply.” The International Co-Investigating Judge invited “submissions,” not “responses.”⁶ There has been no submission to which the International Co-Prosecutor could be “responding.”

Instead, it will be the Defence which may choose to “respond” to the International Co-Prosecutor’s submission, whenever it will be received and depending on whether the Defence considers that a response is warranted. The right to respond is vital in order to make a record and flows from the right to adversarial proceedings, including the right to equality of arms.⁷ The right to respond is all the more vital in this instance where it is expected that the International Co-Prosecutor has filed a submission arguing that Mr. MEAS Muth may be considered “most responsible” for crimes within the jurisdiction of the ECCC.

The Defence may elect to respond to the International Co-Prosecutor’s submission, should it consider a response to be warranted after having reviewed the submission. The Defence may require an unredacted version of the submission and access to the Case File for purpose of any response, but it would be premature to make such a request at this stage, not having received the submission.

⁴ *Id.*, p. 2.


⁵ The Trial Chamber issued a memorandum to parties in Case 002 stating that it considered it to be within the Chamber’s discretion whether to accept replies. *See Case of NUON Chea et al.*, 002/19-09-2007-ECCC-TC, Trial chamber Directive Regarding Responses, Replies to Responses and Filing in One Language Only Under Exceptional Circumstances, 10 March 2011, E64.


⁶ *See* Notification Concerning Suspect’s Requests to Access the Case File and Participate in the Judicial Investigation (D82) and the Full Introductory Submission and Supporting Material (D82/2), 10 July 2014, D82/3, p. 5 (emphasis added): “Invite the Suspect’s Lawyers, the Co-Prosecutors, and Civil Party Lawyers in Case 003 to file, within 10 working days of notification of this Decision, **any submission** they may have on the reconsideration of the RICIJ’s Personal Jurisdiction Decision and his decision to grant the Suspect access to Case File 003 in Notification of Suspect’s Rights.”

⁷ The Trial Chamber in Case 001 has confirmed that “the fundamental nature of [the equality of arms] principle is acknowledged in the Internal Rules...” *Case of KAINING Guek Eav*, 001/18-07-2007-ECCC/TC, Decision on IENG Sary’s Request to Make Submission in Response to the Co-Prosecutors’ Request for the Application of Joint Criminal Enterprise, 3 July 2009, D288/6.90, para. 4. This principle is fundamental to various international human rights instruments, including the ICCPR, which, in accordance with Article 31 of the Cambodian Constitution, the ECCC must respect. According to Article 14(1) of the ICCPR: “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal...”

This letter is filed in English, with the Khmer translation to follow to ensure that these matters can be addressed expeditiously.

Respectfully requested,


ANG Udom


Michael G. KARNAVAS

Co-Lawyers for Mr. MEAS Muth